DANIEL E. LUNGREN, Attorney General
of the State of California
STEVEN H. ZEIGEN, [State Bar No. 60225]
Deputy Attorney General
Department of Justice
Post Office Box 8526
San Diego, California 92186-5266
Telephone: (619) 237-7679

Attorneys for Complainant

BEFORE THE
BOARD OF PODIATRIC MEDICINE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: CRAIG LOWE, D.P.M. 1525 Superior Avenue, Suite 100 Newport Beach, CA 92663 California Podiatry Certificate No. E1997 Respondent.	NO. D-4877 FIRST SUPPLEMENTAL ACCUSATION

Complainant James Rathlesberger, who as cause for further disciplinary action, alleges as follows:

12. Complainant is the Executive Officer of the California Board of Podiatric Medicine ("Board") and makes and files this First Supplemental Accusation in his official capacity.

13. Complainant refers to the allegations contained in paragraphs 1 through 11 of Accusation D-4788 filed August 14, 1992, and incorporates the same herein by reference as if fully set forth.

14. Jurisdiction.

This supplemental accusation is made in reference to the following sections of the California Business and Professions Code (hereinafter "Code"):

a. Section 2222 - provides in pertinent part that the acts of unprofessional conduct or other violations proscribed by the Medical Practice Act are applicable to licensed podiatrists, and that the Board of Podiatric Medicine shall enforce them with respect to podiatry license holders. A licensed podiatrist, who has demonstrated unprofessional conduct, or who has otherwise violated the Medical Practice Act, may be disciplined by the Board which can revoke, suspend, or otherwise restrict his or her certificate of licensure.

b. Section 2227 - a licensee, whose matter has been heard by the Board, pursuant to the provisions of the Administrative Procedure Act, or whose default has been entered, and who is found guilty may, by order of the Board: (a) have his/her certificate revoked; (b) have his or her right to practice suspended for a period not to exceed one year; (c) be placed on probation; (d) be publicly reprimanded; or (e) have such other action taken in relation to discipline as the Board (or an administrative law judge) deems proper.

ADDITIONAL ALLEGATIONS

15. Patient Geri S.

a. Factual Predicate. Geri S. first saw respondent on October 6, 1988, complaining of sharp burning pain in the balls of her feet. Even before seeing the patient, respondent

conducted an EDG study, gait exam, range of motion study and radiographs on the patient. Geri S. had previously been treated by another podiatrist, who had in 1983 performed an arthroplasty of the second digit of the left foot. As late as September 15, 1988, the patient had received a cortisone shot from this treating podiatrist for neuroma pain in the third web space of the right foot.

On October 10, 1988, the patient actually saw respondent for the first time. Respondent diagnosed a series of deformities of the feet, and immediately discussed surgery with the patient. On October 17, 1988, the patient underwent a history and physical examination, after which, on November 2, 1988, respondent performed a series of surgeries on the victim patient's feet. Prior to the surgery, the patient had informed respondent she could only have the surgery if her medical insurance covered the costs of the procedure. Ms. S. was assured by respondent and his staff that the costs would be covered. In addition, respondent advised Geri S. she would be disabled for approximately four to five days.

On November 2, 1988, Geri S. underwent twenty-five different surgical procedures to her feet. Following the surgery, the patient was seen numerous times by respondent for swelling and edema. In response to her condition, the patient received hydrotherapy, ultrasound, a TENS unit, and H wave therapy. On April 27, 1989, Ms. S. received a shot of cortisone into the second and third web space of both feet.

\ \ \

At no time during the treatment by respondent, did Ms. S. ever receive a bill for services. Nor was she ever informed her insurance carrier would refuse to cover the charges. It was not until January 1990 that Ms. S. received her first bill from respondent which was in the amount of $14,000. It was then Geri S. also learned her insurance would not cover the charges.

b. Allegations. Respondent's treatment of Geri S. constituted gross negligence and/or incompetence [2234(b) & (d)], excessive use of diagnostic procedures [725], and dishonesty [2234(e)] by reason of, but not limited to, the following:

1) The Extensive Surgery Done On Geri S. On November 2, 1988, Was Excessive And Unwarranted. The patient presented to respondent sharp pain in the balls of both feet. This was clearly consistent with neuroma. Whatever other deformities respondent noted in examining Geri S.'s feet were not symptomatic. The extensive surgery performed on Geri S. on November 2, 1988, was excessive and unwarranted.

2) The Physical Examination Given Geri S. Did Not Include A Number Of Tests For Which She Was Billed. Prior to the surgery Geri s. underwent a physical examination and history. Respondent billed for an electrocardiogram which is not indicated as given, complete blood count which is not indicated as taken, blood clotting times, chemistry panel, and an AIDS test, none of which results are noted on the chart. Nor did the patient at any time sign a consent for the taking of the AIDS test.

\ \ \

\ \ \

3) At No Time Prior To Surgery Was A Conservative Method Of Treatment Ever Undertaken. The patient's hammertoes were part and parcel of her anterior cavus foot. Neither they nor the bunions present were symptomatic. The pain about which the patient complained was of the type caused by neuroma which can be successfully treated by more conservative modalities.

4) Excessive Treatment And Use Of Diagnostic Procedures. Even prior to seeing Geri S. respondent had a number of expensive, diagnostic tests performed on the patient. These were inappropriate. The use of such tests was more for monetary value than clinical analysis.

5) The Patient Did Not Sign An Appropriate Consent Form. Although respondent, in his medical notes, indicates having discussed the surgery with Geri S., his records contain no copy of an appropriately worded consent form signed by the patient.

6) Excessive And/Or Inappropriate Billing. Respondent excessively and/or inappropriately billed Geri S. during the period of time respondent treated the patient.

a) Rather than billing for a microlaser neurectomy (bill code 64834), respondent should have billed a simple neuroma (bill code 28080). Respondent's billing pertains to a more complex, costly procedure.

b) Respondent's billing for an abductor hallucis tendon graft (bill code 28202) was part and parcel of the

\ \ \

modified McBride bunionectomy (bill code 28292) for which he also billed.

c) The billing for a tumor excision 6 cm with laser (bill code 13132) is more of a plastic surgery type procedure which respondent did not perform. Respondent removed a benign plantar fibroma.

d) Respondent's billing for a metatarsal osteotomy (bill code 28308) for both feet was a procedure respondent did not perform. If respondent performed instead a plantar ostectomy it should have been billed as a code 28112.

e) The assistant surgeon billed in conjunction with the surgeon for these same procedures.

f) Respondent's records indicate it took seven hours of operating time to complete these procedures. That time is excessive.

g) On 24 separate occasions respondent billed for physical therapy modalities like hydrotherapy when, in fact, such physical therapy was part of the postoperative physical therapy and should not have been billed.

7) Respondent Failed To Obtain A Pathology Report For A Tumor Removed During Surgery. Respondent removed a benign plantar fibroma (fibrous tumor) during surgery. He failed to obtain a pathology report on this tumor.

8) Respondent Failed To Send Patient Geri S. A Bill Of $14,000 For Services Rendered Until After The Expiration Of The Statute Of Limitations. Certain acts by physicians are, by themselves, unconscionable. In this instant case, knowing

Geri S. had no financial ability to pay for anything beyond insurance deductibles, respondent assured the patient her insurance would cover the procedures, performed the surgery without proper informed consent, and failed to tender the patient a bill until more than fourteen months after the surgeries were performed. There is absolutely no ethical reason why this procedure was followed. It represents the most extreme departure from procedures practiced in the podiatric community.

WHEREFORE, complainant requests the Board hold a hearing on the matters alleged herein, and following said hearing, issue a decision:

1. Revoking Podiatry Certificate No. E1997 heretofore issued to respondent Craig Lowe, D.P.M.; or

2. Taking such other and further action as the Board deems appropriate.

DATED: November 17, 1992

JAMES H. RATHLESBERGER
Executive Officer
Board of Podiatric Medicine
Medical Board of California
Department of Consumer Affairs
State of California

Complainant

SHZ:sol
10-22-92
03576160-
SD92AD0391